

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK A. McKENZIE,

Plaintiff,

vs.

CV F 05 0045 AWI WMW P

_____ORDER RE MOTION (DOC 16)

B. K. RUSH, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Pending before the court is Plaintiff's motion for to stay this action pending resolution of a petition for writ of habeas corpus.

The complaint in this action claims that defendants violated Plaintiff's Due Process rights at a prison disciplinary hearing. On March 20, 2006, an order was entered, dismissing the complaint with leave to file an amended complaint. Specifically, the complaint was dismissed because Plaintiff had not alleged that his disciplinary conviction had been invalidated. Because Plaintiff's claim in this case, if proven, would necessarily invalidate his conviction at the prison disciplinary hearing, such a claim may not be brought in a civil rights action until that claim as been reversed, expunged or otherwise invalidated. Edwards v. Balisok, 520 U.S. 641, 644 (1997).

Plaintiff has filed a petition for writ of habeas corpus challenging the validity of the prison disciplinary hearing. Plaintiff requests that this action be stayed pending the resolution of

1 his habeas petition. Plaintiff is advised that because he has not alleged that his conviction has
2 been invalidated, this action should be dismissed. The court will, however, recommend that this
3 action be dismissed without prejudice to the filing of a new action once Plaintiff has had his
4 conviction invalidated.

5 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to stay this action
6 pending resolution of his habeas petition is denied.

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10 IT IS SO ORDERED.

11 **Dated: June 20, 2006**
mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE